IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1014 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANIBEN WD/O BHIKHABHAI LALLUBHAI - Appellant(s)
Versus
MUKUNDRAY VRAJLAL SHAH & 1 - Defendant(s)

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Appearance :

MR JC SHETH for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
NOTICE UNSERVED for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/07/2006

ORAL JUDGMENT

By way of this appeal, the appellant – original plaintiff has challenged the judgment and decree passed by the learned City Civil Court at Ahmedabad dated 31st December, 1984 passed in Civil Suit No.2498 of 1983 in

dismissing the same.

2. The appellant herein (hereinafter referred to as “the plaintiff”) filed suit for a declaration that respondent No.1 (hereinafter referred to as the “defendant No.1”) was a Benamidar of the suit property and the real owner of the property was Bhikhabhai Lallubhai Shah and as a legal heir, he was not real owner of the said property. In the said suit, it was also further prayed to restrain defendant No.1 by permanent injunction from transferring or assigning or mortgaging the property or by transferring the same by sale.

3. Plaintiff was the widow of Bhikhabhai Lallubhai Shah, defendant No.2 is her daughter and defendant No.1 is her son-in-law. It was averred in the plaint that in order to see that defendant No.2 may have comforts, said Bhikhabhai purchased the land located in Saritakunj Society, Paldi and after the purchase of the said land, he built up a bungalow thereon for the residence of the defendants because the defendants had married. It was also averred in the plaint that when the bungalow was build up, defendant No.2 executed equitable mortgage deed in favour of late Bhikhabhai. The plaintiff has stated

the terms of the mortgage deed in the plaint and it was stated in the said deed that defendant No.2 had taken Rs.4000/- from her father and her father got the document or sale of the land in her favour and by taking money from her father repeatedly, defendant No.2 completed the bungalow on the said land and an amount of Rs.4000/- only was contributed by her husband – defendant No.1, who took Rs.4000/- as loan from his department and the document of the said land was in the name of her husband as Benami and the same was assigned and the loan was utilized in constructing the bungalow and the loan was repaid by defendant No.2 and on completion of the loan, it was agreed between the parties that the benami document would be cancelled and by transferring the bungalow in the name of her husband, defendant No.2 would get the bungalow transferred in her name and the same were the conditions and both the original documents were with defendant No.2 It was submitted that in fact it was purchased by late Bhikhabhai and the sale deed in favour of defendant No.1 was benami being son-in-law. Therefore, it was requested to decree the suit.

4. The suit was resisted by defendant No.1. A reply to the notice of motion was filed at Exh-B which was treated

as written statement also. It was alleged that the suit was filed in collusion with defendant No.2 and the relations of the defendants were spoiled from the year 1974 and defendants were staying separately and the suit was filed against defendant No.1 in order to harass defendant No.1 physically and mentally. It was also denied that the transaction was benami. He also denied the transaction of equitable mortgage. It was submitted that in fact he was serving in AMTS, Ahmedabad since 1947 and had borrowed money, in all Rs.15,640/- as loan and he has also executed mortgage deed in favour of his office. It was also submitted that initially, the plot was purchased in the name of defendant No.2 and on 12-12-1958 and thereafter, the said plot was transferred in the name of defendant No.1 by proper document dated 25-3-1960 and thus, defendant No.1 was the owner of the plot in question right from the beginning and in Government record, the said bungalow was entered in the name of defendant No.1 and the defendant No.1 produced the xerox copy of the said document, municipal bill etc. It was also further submitted that there was a dispute between the defendants and the same was settled before the Hon'ble Gujarat High Court and defendant No.1 has paid Rs.16,000/- as settlement of all the disputes to

defendant No.2. Therefore, it was requested to dismiss the suit.

5. Defendant No.2 also filed written statement at Exh-16. He has submitted that there was a dispute between the defendants. It was also submitted that the condition of the defendants was not good and the father of defendant No.2 purchased the plot/land in the name of defendant No.2 and no consideration for the purpose of the same was paid by the defendants and at the time of construction, the father of defendant No.2 helped defendant No.2 and the bungalow was built out of her father's money.

6. The learned trial Court framed the issues at Exh-12. Plaintiff was examined at Exh-14, defendant No.1 was examined at Exh-18 and defendant No.2 was examined at Exh-33. The documentary evidence were produced such as equitable mortgage, original sale deed in favour of defendant No.2, the documents by which plot was transferred in the name of defendant No.1, loan taken from AMTS, Ahmedabad mortgage deed executed by defendant No.1 in favour of AMTS, Ahmedabad, letter from Town Planning Officer, copy of the record of rights, municipal bill etc. The learned trial Court after considering the

oral as well as documentary evidence held issue Nos.1,2 and 3 in negative and issued No.4 in affirmative. The learned trial Court held that the plaintiff has failed to prove that defendants were benamidar of the suit property and that she is the real owner of the suit property as alleged. Accordingly, the learned trial Court dismissed the suit. Being aggrieved by the same, the plaintiff has preferred the present appeal.

7. On considering the oral as well as documentary evidence, it emerges that the land in question was initially purchased on 12-12-1958 in the name of defendant No.2 but the same was transferred to defendant No.1 by defendant No.2 by document dated 25-3-1960 within a period of two years and as per the said document, defendant No.2 has clearly stated in the transfer deed, Exh-20 that defendant No.1 was the real owner of the property and she was his benamidar and hence, the property was transferred to defendant No.1. Thus, in fact as per the said document also, defendant No.1 was the real owner. Defendant No.2 has failed to prove contrary to what was stated in the transfer deed. On considering the documentary undeceiving i.e. the loan taken by defendant No.1 from AMTS, Ahmedabad, plot mortgaged with

AMTS while taking the loan, it clearly establishes that the plot was purchased by him and the construction was also put up by him after taking loan from AMTS. As rightly observed by the learned trial Court that as the relations between defendant Nos.1 and 2 were spoiled , with a view to harass defendant No.1 mentally as well as economically, the suit was filed by the mother-in-law i.e. the plaintiff. The fact that there was a dispute between defendant Nos.1 and 2 is also established from the record and the compromise arrived at between defendant Nos.1 and 2 before this Court. Considering the documentary as well as oral evidences, it cannot be said that defendant No.1 was the benamidar and that late Bhikhabhai was the owner of the plot in question. Under the circumstances, the learned trial Court has rightly dismissed the suit.

8. For the reasons as stated above, the appeal fails and the same is dismissed accordingly. No costs.

(M.R.SHAH,J.)

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